United Nations ST/IC/2012/19

Secretariat

6 September 2012

Information circular*

To: Members of the staff

From: The Under-Secretary-General for Management

Subject: **Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour, 1 July 2011 to 30 June 2012**

1. The purpose of the present circular[1] is to continue to inform staff members of the practice of the Secretary-General in exercising his authority in disciplinary matters under article X of the Staff Regulations of the United Nations, and to implement paragraph 17 of resolution 59/287, in which the General Assembly requested the Secretary-General to ensure that all staff of the Organization are informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard for the protection of the privacy of the staff member(s) concerned. This circular covers the period from 1 July 2011 to 30 June 2012.

2. A broad overview of the administrative machinery in disciplinary matters is provided in section I below. Section II contains a summary of the cases for which one or more disciplinary measures were imposed by the Secretary-General during the reporting period. Section III provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

* The present circular is in effect until further notice.

[1] Previous circulars covering the period from January 2000 to June 2011 were issued as ST/IC/2002/25, ST/IC/2004/28, ST/IC/2005/51, ST/IC/2006/48, ST/IC/2007/47, ST/IC/2008/41, ST/IC/2009/30, ST/IC/2010/26 and ST/IC/2011/20.

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I. Overview of administrative machinery in disciplinary matters in the system of administration of justice

A. Legislative framework governing the conduct of staff members[2]

3. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity".

4. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 1.2 for specific instances of expected or prohibited conduct.

B. Misconduct

5. Article X of the Staff Regulations provides in regulation 10.1 (a) that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Staff Rule 10.1 (a) provides that the "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct". Additionally, Staff Rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority".

6. Within these parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371/Amend.1, on revised disciplinary measures and procedures,[3] provides further examples of conduct for which disciplinary measures may be imposed. A new administrative instruction on investigations and the disciplinary process is under preparation and is the subject of ongoing discussion and consultation with management and stakeholders.

C. Due process

7. The investigation and disciplinary processes set out in ST/AI/371/Amend.1 involve investigating unsatisfactory conduct, establishing the facts and analysing the information gathered to determine whether misconduct has occurred, and then

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[2] Provisions relating to the status, rights and obligations of staff members, and to disciplinary matters, can be found in the electronic Human Resources Handbook under the headings "Status, basic rights and duties" and "Disciplinary".

[3] See also ST/SGB/2008/5, on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority.

exercising discretion to decide whether a measure is warranted. A manager may become aware, through a formal report or through other means, that a staff member may have engaged in possible misconduct. The decision whether to initiate an investigation normally lies with the head of department or office. Depending on the subject matter and complexity of an investigation, it can be undertaken by the head of department or office or his or her designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of the head of department or office. Where the head of department or office believes, following an investigation, that misconduct may have occurred, he or she refers the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case.[4]

8. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter as a disciplinary case, the staff member is notified in writing of the allegations of misconduct and is informed of his or her opportunity to comment on the allegations and of his or her right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance or from outside counsel at his or her own expense. The staff member is given a reasonable opportunity to respond to the allegations of misconduct. In the light of the comments provided by the staff member, the Assistant Secretary-General for Human Resources Management decides whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the latter case, the Under-Secretary-General for Management decides, on behalf of the Secretary-General, whether to impose one or more of the disciplinary measures provided for in Staff Rule 10.2 (a).

9. At any time pending an investigation until the completion of the disciplinary process concerning a staff member, the Assistant Secretary-General for Human Resources Management may decide, on the basis of a recommendation from the head of department or office or on his or her own initiative, to place a staff member on administrative leave with pay where: (a) reassignment or redeployment in the same duty station is not be feasible or would not adequately address the risks that have been identified; (b) there is prima facie evidence that the conduct of the staff member poses a danger to other United Nations personnel or to the Organization; (c) the staff member is unable to continue to perform his or her functions effectively because of an ongoing investigation and the nature of the functions; (d) there is prima facie evidence that continued service by the staff member would create an unacceptable risk that he or she could interfere with the investigation; or (e) the Department of Safety and Security determines that the continued presence of the staff member on United Nations premises could constitute a security risk to the Organization. Decisions on placement on administrative leave without pay are taken by the Under-Secretary-General for Management.

10. In accordance with Staff Rule 10.3 (c), a staff member against whom a disciplinary measure has been imposed may submit an application to the United Nations Dispute Tribunal challenging the imposition of the measure(s) in accordance with chapter XI of the Staff Rules.[5]

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[4] The head of administration in a mission will refer the case to the Department of Field Support at Headquarters, which will refer the matter to the Office of Human Resources Management if it concurs with the mission's assessment.

[5] Judgements of the Dispute Tribunal relating to disciplinary cases can be found on the website of the Office of the Administration of Justice (www.un.org/en/oaj).

D. Disciplinary measures

11. Staff Rule 10.2 (a) provides that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in a particular case):

(a) Written censure;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for salary increment;

(d) Suspension without pay for a specified period;

(e) Fine;

(f) Deferment, for a specified period, of eligibility for consideration for promotion;

(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;

(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;

(i) Dismissal.

E. Other measures

12. Written or oral reprimands, recovery of moneys owed to the Organization and administrative leave with or without pay are not considered disciplinary measures. Reprimands, like warnings or letters of caution, are administrative/managerial measures that are important for upholding standards of proper conduct and promoting accountability. Additionally, where inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

II. Summary of cases for which the Secretary-General imposed disciplinary measures during the period from 1 July 2011 to 30 June 2012

13. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure(s) imposed by the Secretary-General. The summaries do not set out all of the circumstances and details of each case. As the Dispute Tribunal has observed, disciplinary cases tend to be very fact-specific, and one must exercise caution in extracting general principles concerning the proportionality of disciplinary measures from the types of measures imposed in other cases, as each case has its own unique facts and features. In accordance with staff rule 10.3 (b), disciplinary measures imposed must be proportionate to the nature and gravity of the misconduct involved. The United Nations Appeals Tribunal has observed that proportionality means that an administrative action should not be more excessive

than is necessary for obtaining the desired result. The Appeals Tribunal has also consistently recognized that the Secretary-General has a margin of discretion to make legitimate choices between competing considerations and priorities, and that due deference must be shown to his administrative decisions because Article 101 (3) of the Charter requires him to hold staff members to the highest standards of integrity and he is accountable to the Member States of the United Nations in that regard.

14. Both aggravating and mitigating circumstances are looked at in determining a sanction, but these will vary according to the unique facts of a case.

15. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is insufficient evidence to pursue a matter as a disciplinary case or when a staff member provides a satisfactory explanation in response to allegations of misconduct, the staff member is informed that the case is closed, and he/she is considered cleared of the allegations. Cases may also be closed when a staff member retires or is otherwise separated from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record may be made and placed in the former staff member's official status file so that the matter can be further considered if and when the staff member rejoins the Organization.

A. Sexual exploitation and abuse

16. A staff member attempted to obtain sexual favours from a job applicant, who was a beneficiary of assistance, in return for offering to provide assistance with the United Nations recruitment process.

Disposition: separation from service, with compensation in lieu of notice, but without termination indemnity.

B. Harassment, including sexual or gender harassment

17. A staff member with managerial responsibilities engaged in a pattern of improper and unwelcome conduct, including of a sexual nature. The staff member also engaged in erratic, abusive and threatening behaviour. The staff member's conduct created an intimidating, hostile or offensive work environment. It was directed primarily by the staff member towards junior colleagues. The staff member also used United Nations computer resources to receive, view and store pornography.

Disposition: separation from service, with compensation in lieu of notice, but without termination indemnity.

18. On one occasion after working hours, a staff member made unwelcome sexual advances towards a colleague.

Disposition: demotion of one grade with deferment, for three years, of eligibility for consideration for promotion.

19. A staff member used insulting language towards another staff member on the telephone and in e-mails. The staff member repeated the remarks in a later meeting with the staff member and their supervisors.

Disposition: censure and loss of five steps in grade.

C. Abuse of authority

20. A staff member allowed a person to work for five months under direct supervision without remuneration, in the knowledge that the person did not have a valid employment contract with the Organization. There were mitigating circumstances.

Disposition: demotion of one grade with deferment, for a period of three years, of eligibility for consideration for promotion.

D. Retaliation

21. Two senior staff members took action that was detrimental to the interests of another staff member who had made a report of possible misconduct against those staff members.

Disposition: fines.

E. Assault (verbal and physical)

22. A staff member verbally abused a supervisor by shouting, using a threatening tone and threatening to kill the supervisor; physically abused another staff member; and verbally abused the same colleague and two other staff members by threatening their safety and that of their families.

Disposition: dismissal.

23. A staff member physically assaulted another staff member, resulting in injury to the other staff member's eye and forehead.

Disposition: dismissal.

24. A staff member physically assaulted another staff member by hitting the other staff member in the head, resulting in injuries to the staff member's head.

Disposition: dismissal.

25. A staff member physically assaulted a United Nations Volunteer, who was also the staff member's spouse. The victim sustained multiple traumatic injuries for which hospitalization was required.

Disposition: dismissal.

26. A staff member on three occasions acted in a verbally disrespectful and disruptive manner by arguing with colleagues and supervisors. On one occasion the staff member destroyed property during an argument. On two occasions the staff member made threatening remarks about the use of guns in the workplace. There were mitigating circumstances.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

27. A Security Officer, during a response to a night-time intrusion by two individuals on United Nations premises, unholstered a firearm and pointed it at one of the intruders and used disproportionate physical force to subdue the intruder. There were mitigating circumstances.

Disposition: demotion of one grade with deferment, for two years, of eligibility for consideration for promotion.

28. In the course of a heated argument, a staff member used abusive language towards another staff member and subsequently damaged United Nations property. There were mitigating circumstances.

Disposition: censure and a fine representing the cost of repair of the window.

F. Theft and misappropriation

29. A staff member removed, without authorization, a hard drive from a United Nations computer and sold the hard drive to an acquaintance.

Disposition: dismissal.

30. A staff member who was responsible for safekeeping, handling and reporting changes of inventory of United Nations equipment removed from United Nations premises without permission and did not return a number of items of United Nations-owned equipment. The staff member obtained two items of United Nations-owned equipment by falsifying official request forms. There were mitigating circumstances.

Disposition: separation from service with compensation in lieu of notice, but without termination indemnity.

31. A staff member removed from United Nations premises, without authorization, 34 rolls of wire belonging to the Organization. There were mitigating circumstances.

Disposition: separation from service with compensation in lieu of notice, but without termination indemnity.

32. Two staff members participated in the theft of copper wire from a United Nations warehouse. The staff members were convicted under national law for their complicity in the theft. There were mitigating circumstances.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

G. Fraud, misrepresentation and false certification

33. Three staff members participated in a fraudulent scheme for the misuse of official United Nations flights by unauthorized individuals and companies. Two of the staff members entered names of unauthorized passengers on official flight manifests. One of the staff members conspired with third parties in the preparation of United Nations documents containing false information and attempted to interfere with an official investigation. The scheme perpetrated by the staff members was

long-running and widespread. The staff members held positions of trust and acted out of a desire for financial gain. The abuse created a serious threat to aviation security, exposed the Organization to liability and damaged the Organization's reputation.

Disposition: dismissal of all staff members.

34. A staff member cashed to a personal account the proceeds of a cheque made out to a staff union. The staff member also requested another staff member to falsify payslips.

Disposition: dismissal.

35. A staff member submitted falsified payslips in support of applications for bank loans.

Disposition: dismissal.

36. Four staff members submitted claims under the medical insurance plan containing false information in relation to dental treatment purportedly received by them and their dependants.

Disposition: dismissal of all staff members.

37. Two staff members submitted claims under the medical insurance plan, containing false information in relation to dental treatment purportedly received by them and their dependants. The staff members made an early admission of their misconduct and cooperated fully with the investigation.

Disposition: separation from service, with compensation in lieu of notice, but without termination indemnity.

38. A staff member submitted a personal history profile containing information that the staff member knew to be false relating to the reasons for leaving previous employment. There were mitigating circumstances.

Disposition: separation from service, with compensation in lieu of notice, but without termination indemnity.

39. A staff member falsified invoices for medical treatment and subsequently submitted them to the staff member's private insurance company in support of medical claims. There were mitigating circumstances.

Disposition: separation from service, with compensation in lieu of notice, but without termination indemnity.

40. A staff member created a false note verbale on official letterhead on the staff member's United Nations computer. The staff member forged the signature of another staff member, and sold the note verbale to another staff member in order for the latter to obtain a non-immigrant visa. Several false documents, such as fake diplomas, were found on the staff member's United Nations computer. There were mitigating circumstances.

Disposition: separation from service, with compensation in lieu of notice, but without termination indemnity.

41. A staff member paid another staff member to obtain a note verbale in support of an application for a visa. The staff member subsequently submitted the note verbale to an embassy. There were mitigating circumstances.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

H. Misuse of or failure to exercise reasonable care in relation to United Nations property or assets

42. A staff member took, without authorization, discarded batteries and attempted to remove them from United Nations premises. The staff member also moved, without authorization, a fuel pump, from its proper location within United Nations premises. There was insufficient evidence that the staff member intended to steal the property.

Disposition: censure, a loss of two steps in grade and a deferment, for two years, of eligibility for salary increment.

43. A staff member left the scene of a minor accident in which the staff member was involved while operating a United Nations vehicle. There was no violation of local laws. The staff member made attempts at reparation for the damage to the vehicle.

Disposition: censure and deferment, for one year, of eligibility for salary increment.

44. A staff member took, without authorization, a roll of linoleum belonging to the Organization and damaged it by cutting it into several pieces. There was insufficient evidence that the staff member intended to steal the property.

Disposition: censure.

45. A staff member who performed security functions violated the applicable curfew and drove at an excessive speed while operating a United Nations vehicle.

Disposition: censure.

46. A staff member, while off duty and without prior authorization, drove from United Nations premises a United Nations vehicle, which at the time contained United Nations assets. There was insufficient evidence that the staff member intended to steal the property.

Disposition: censure.

47. A staff member, while on official duty and without prior authorization, and in return for payment from a non-staff member, used a United Nations vehicle to transport a container to a location outside the mission.

Disposition: censure.

I. Misuse of official documents, records or files

48. A staff member issued, without authorization, letters to various Government offices seeking assistance in issuing visas to persons accompanying an official United Nations mission. The staff member signed the letters in the name of another

staff member without that staff member's knowledge or consent, acting in certain cases contrary to express instructions. There were mitigating circumstances.

Disposition: written censure and demotion of one grade, with deferment for one year of eligibility for consideration for promotion.

49. A staff member, in the course of official functions, altered a travel quotation provided by an airline and submitted the altered quotation for approval in order to prevent another staff member from having to use the services of a specific airline, against which other staff members had voiced complaints.

Disposition: fine and censure.

J. Misuse of information and communications technology resources

50. A staff member received e-mails containing pornographic material on United Nations e-mail on at least 20 occasions; failed to report to the proper authority the receipt of the e-mails from other United Nations staff members and sent e-mails containing pornographic material using United Nations e-mail on at least 130 occasions.

Disposition: censure and loss of two steps in grade with deferment, for two years, of eligibility for salary increment.

51. A staff member received e-mails containing pornographic material, on United Nations e-mail on at least 24 occasions; failed to report to the proper authority the receipt of the e-mails from other United Nations staff members and sent e-mails containing pornographic material using United Nations e-mail on at least 24 occasions.

Disposition: censure.

K. Unauthorized outside activities and conflict of interest, including procurement irregularities

52. A staff member failed to exercise discretion with regard to matters of official business by reporting information that was subject to official internal investigations to the press and outside Government agencies; communicated to outside sources, including the press, information known to the staff member by reason of the staff member's official position that the staff member knew or ought to have known had not been made public; used the staff member's position for personal reasons to prejudice the positions of those the staff member did not favour; and engaged in an outside occupation, without the approval of the Secretary-General.

Disposition: dismissal.

53. A staff member was employed by the staff member's Government for one year while employed with the Organization, without the approval of the Secretary-General. A conflict of interest existed between the nature of the staff member's outside activities and status as a staff member. There were mitigating circumstances.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

54. A staff member continued to work for a private company when the staff member joined the Organization, without the approval of the Secretary-General. As part of the staff member's official functions, the staff member was assigned to provide assistance and advice for an official event, and arranged for the private company to enter into a remunerated contract in connection with the event. There were mitigating circumstances.

Disposition: separation from service with compensation in lieu of notice and with termination indemnity.

55. After repeated procurement exercises had failed to secure certain aircraft that were necessary in a peacekeeping mission, two staff members engaged in communications with a vendor regarding specifications required by the Organization. The staff members acted under the instructions of their supervisor to contact potential vendors and there was no evidence that the staff members were motivated by personal gain.

Disposition: censure and requirement to attend training.

III. Possible criminal behaviour

56. In its resolution 59/287, the General Assembly requested the Secretary-General to take action expeditiously in cases of proven misconduct and/or criminal behaviour and to inform Member States about the actions taken. During the reporting period, seven cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States. One of the cases referred involved seven staff members. The Secretary-General is not aware of any action taken in respect of such cases by the Member States concerned.